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In re Application of  
SCHULTZ *et al*  
U.S. Application No.: 09/673,406  
PCT No.: PCT/US99/08207  
Int. Filing Date: 15 April 1999  
Priority Date: 17 April 1998  
Attorney Docket No.: 6338.02 DEB  
For: EVACUATOR

DECISION ON  
PETITION TO WITHDRAW  
HOLDING OF ABANDONMENT

This decision is in response to applicants' "Petition for Withdrawal of Holding of Abandonment" ("Pet.") filed 24 July 2001 claiming that a United States Patent and Trademark Office action was not received. No fee is required.

**BACKGROUND**

On 31 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath/declaration in compliance with 37 CFR 1.497(a) and (b) was required. A one month time limit in which to respond was set.

On 24 July 2001, applicants submitted via facsimile the instant petition which was accompanied by, *inter alia*, a copy of an exemplary docket report for an actual docket and the above-captioned application, and a signed declaration.

**DISCUSSION**

The showing required to establish the failure to receive an Office communication (set forth in section 711.03(c) of the Manual of Patent Examining Procedure, page 700-87 (Rev. 1 Feb. 2000) must consist of: (1) a statement from the practitioner declaring that the Office communication was not received by the practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and, (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioners' statement.

In the instant petition, counsel requests "withdrawal of abandonment because the October 31 Notification of Missing Requirements was not received." Pet. ¶ 3. This statement satisfies item (1).

However, applicants' attorney does not attest that a search of the file jacket and docket records was accomplished for this application. Section 711.03(c) of the MPEP specifically states that a reference to searching both the file jacket and the docket record must be included in practitioner's statement. Therefore, item (2) has not been satisfied.

Concerning item (3), applicants submitted a copy of "an exemplary (but actual) docket report from an unrelated case" which purportedly shows how the firm normally responds to a Notice of Missing Requirements. Id. A copy of "the docket report for the subject application" is also included. Id. A review of the docket records for the above-referenced application reveals only entries that are awaiting responses. The exemplary docket records the due date for a response to Notice of Missing Parts.

However, in order to satisfy the docket record requirement, applicants must provide a copy of counsel's docket records for the date upon which a response to the Form PCT/DO/EO/905 was due (i.e., 30 November 2000). An example of such a record would be a daily "tickler" report or a daily log showing all applications for which a response is due on that date. The docket report showing only the subject application does not satisfy this requirement. Thus, item (3) is also not satisfied.

Accordingly, applicants have not yet met the requirements required to establish nonreceipt of an Office action.

### CONCLUSION

In view of the above, applicants' petition to withdraw the holding of abandonment is DISMISSED without prejudice. The subject application remains ABANDONED.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition for Withdrawing the Holding of Abandonment."

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.

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